

REMARKS

This Amendment is made to the Office Action dated November 10, 2008. Claims 1, 2, 4, 7-10 and 12-23 are currently pending. By this Amendment, claims 1, 8 and 15 have been amended to more clearly define the presently claimed invention. New claim 27 is being presented for consideration. Applicants respectfully request reconsideration of the pending claims in view of the remarks presented below.

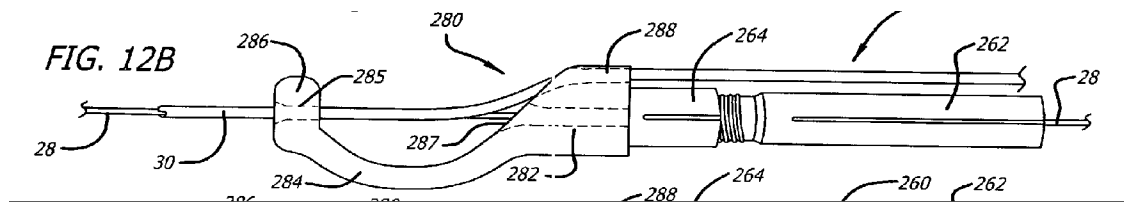
Claims 1, 2, 4, 7-10 and 12-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,152,946 to Broome et al. (the "Broome patent") in view of U.S. Patent No. 5,161,534 to Berthiaume (the Berthiaume patent") and in further view of U.S. Patent No. 4,801,294 to Okada et al. (the "Okada patent"). Applicants have amended the claims, as noted above, to more clearly define the presently claimed invention. Applicants also strongly disagree with the Examiner's position concerning the combination of art suggested by the Examiner as Applicants see no motivation for one skilled in the art to combine such different medical devices together in the first place. First, it is noted that the Okada patent shows a fixture, referred to as a "fixing means B," which is simply used to split a plastic sheath tube 3a and 3b from a "very soft catheter body 1" (see Column 2, line 54 of the Okada patent). First, this very soft catheter body (1) is not a guide wire as the term "guide wire" is known and used in the medical field. In the Office Action, the Examiner states:

Okada further discloses the splitter comprises an extension arm (5) having a distal end capable of receiving both the **guidewire (1)** and the sheath and a side-port (7) that is offset from the central axis of the **guidewire**. [Emphasis added]

The Examiner's position is incorrect since the component labeled with reference numeral 1 is the soft catheter body, as noted above, not a guide wire as suggested by the Examiner. Moreover, there appears to be no motivation for one skilled in the art to combine a sheath used for nasogastric intubation with the embolic filtering device of the Broome patent, which is placed in a patient's vasculature. There also appears to be no motivation for one skilled in the art in placing the Okada sheath splitter on the cap of the

Berthiaume torque device as suggested by the Examiner. Applicants only agree with the Examiner's position that the Berthiaume torque device could be used on the embolic filter device disclosed in the Broome patent. In view of these apparent differences between the Okada nasogastric intubation device and the devices disclosed in the Broome and Berthiaume patents, Applicants believe that the Examiner has merely used the present claims as a road map and has selected and chosen prior art references which disclose the various elements recited in the pending claims. These combinations of prior art suggested by the Examiner fail to justify why one skilled in the art would be motivated to combine them in the first place. Accordingly, Applicants believe that the Examiner has merely collected various elements in unrelated medical devices in an attempt to recreate Applicants' invention, using the claims as a roadmap. For these reasons alone, the obviousness rejections of the pending claims should be withdrawn.

As noted above, Applicants have amended claims 1, 8 and 15 to more clearly define the invention. These claims now include the recitation that a portion of the guide wire is utilized to shear the sheath away from the guide wire as the sheath is being retracted through the side port. Applicants have amended these claims to expedite prosecution of the present case. Applicants reserve the right to resubmit similar claims in an application to be filed later. Applicants note that the sheath splitter of the Okada patent utilizes a tubular structure, referred to as an inner tube (4), to actually tear the sheath tube (2) through retraction. Without this structure, the sheath tube (2) could not be torn since the catheter (1) is too soft to perform this function. In Applicants' presently claimed invention, it is actually a portion of the guide wire itself which acts much like a cutting blade by shearing the sheath as it is retracted through the side port. As a result, a separate inner cutting tube is not need with Applicants' invention since the guide wire acts as a cutting blade. As can be seen in FIG. 12B of the present invention, reproduced on the next page, a portion of the guide wire 28 extending in front of the lumen 282



effectively cuts the sheath 30 as it is being retracted through the side port 288. This type of cutting action is not achieved by the Okada device and it would not have been obvious to adapt the Okada device to do this since the catheter (1) used in the Okada patent is too soft since it is designed for nasogastric intubation. Applicants respectfully request the Examiner to withdraw the obviousness rejections of all of the pending claims.

Newly presented claim 27 is directed to a specific torque handle which also utilizes a portion of the guide wire to shear the sheath through proximal retraction. None of the art of record discloses the particular structure recited in these new claims.

Claim 11 was previously withdrawn in response to an election of species requirement. Applicants request the Examiner to now consider claim 11 in view of the apparent patentability of claim 8.

In view of the foregoing, it is respectively urged that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at (310) 824-5555 to facilitate prosecution of this application, if necessary.

In light of the above remarks, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Please charge any fees payable in connection with this response to Deposit
Account No. 06-2425.

Respectfully submitted,

FULWIDER PATTON LLP

/Thomas H. Majcher/
Thomas H. Majcher
Registration No. 31,119

THM:lm

326335.1